

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                                  |   |                     |
|----------------------------------|---|---------------------|
| OTSUKA PHARMACEUTICAL CO., LTD., | ) |                     |
|                                  | ) |                     |
| Plaintiff,                       | ) |                     |
|                                  | ) |                     |
| v.                               | ) | C.A. No. 22-513-RGA |
|                                  | ) |                     |
| TEVA PHARMACEUTICALS INC. and    | ) |                     |
| TEVA PHARMACEUTICALS USA, INC.,  | ) |                     |
|                                  | ) |                     |
| Defendants.                      | ) |                     |

**DEFENDANTS' MOTION FOR LEAVE TO FILE SUR-REPLY BRIEF IN  
OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST  
AMENDED COMPLAINT AND TO ADD ZHEJIANG HUAHAI  
PHARMACEUTICAL CO., LTD. AS DEFENDANT**

Defendants Teva Pharmaceuticals Inc. and Teva Pharmaceuticals USA, Inc. (collectively, "Teva") respectfully move the Court for permission to file a 2-page sur-reply brief to address three arguments and new legal authority raised by Plaintiff Otsuka Pharmaceutical Co. ("Otsuka") for the first time in its Reply Brief in support of its Motion for Leave to File First Amended Complaint to Add Zhejiang Huahai Pharmaceutical Co., Ltd. as Defendant. D.I. 59 ("Reply"). A copy of the sur-reply that Teva would file, if permitted to do so by the Court, is attached as Exhibit A.

Otsuka purportedly filed its motion for leave to facilitate discovery from Huahai. In its Reply Brief, Otsuka made the following new arguments that, without a sur-reply, Teva will not have a chance to address. First, Otsuka argues that its Motion is not prejudicial or futile because Huahai has previously consented to service and/or joinder in other cases, without alerting the Court that Huahai's U.S.-based corporate affiliate, Princeton, was already a properly named party in each of those cases. Second, Otsuka raises, for the first time, objections to Teva's most recent production of Huahai documents. Third, Otsuka asserts in its Reply that it adequately pleaded induced infringement by Huahai under 35 U.S.C.

§ 271(b), an argument that was not raised in Otsuka's opening brief, and cites, for the first time, inapposite legal authority (*Forest Lab'ys, Inc. v. Ivax Pharms., Inc.*, 501 F.3d 1263 (Fed. Cir. 2007)) in support of that argument.

Generally, leave to file a sur-reply is granted when the proposed sur-reply brief responds to new evidence, facts, or arguments raised for the first time in the moving party's reply brief. *See, e.g., EMC Corp. v. Pure Storage, Inc.*, 154 F. Supp. 3d 81, 103 (D. Del. 2016). Here, Otsuka has presented new arguments and legal authority for the first time in its Reply Brief, and Teva has not had an opportunity to respond. Teva's proposed sur-reply should be permitted as it provides the Court more context to fully and fairly evaluate Otsuka's Motion for Leave to Amend. *See id.* at 103 (granting leave to file sur-reply where reply brief raised new arguments and legal authority); *Endo Pharms. Inc. v. Actavis Inc.*, C.A. No. 14-1381-RGA, 2017 WL 3731001, at \*2 n.3 (D. Del. Aug. 30, 2017) (granting leave to file sur-reply where reply brief raised new arguments).

In accordance with D. Del. LR 7.1.1, Teva certifies that it has made reasonable efforts to reach agreement on this motion.

Accordingly, Teva respectfully requests that the Court permit the filing of the sur-reply brief attached hereto as Exhibit A.

OF COUNSEL:

Elaine H. Blais  
Harrison C. Gunn  
GOODWIN PROCTER LLP  
100 Northern Ave.  
Boston, MA 02210  
(617) 570-1000

Keith A. Zullo  
GOODWIN PROCTER LLP  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018  
(212) 813-8800

/s/ Karen E. Keller

Karen E. Keller (No. 4489)  
Nathan R. Hoeschen (No. 6232)  
Emily S. DiBenedetto (No. 6779)  
SHAW KELLER LLP  
I.M. Pei Building  
1105 North Market Street, 12th Floor  
Wilmington, DE 19801  
(302) 298-0700  
kkeller@shawkeller.com  
nhoeschen@shawkeller.com  
edibenedetto@shawkeller.com  
*Attorneys for Defendants Teva  
Pharmaceuticals, Inc. and Teva  
Pharmaceuticals USA, Inc.*

Jenny J. Zhang  
GOODWIN PROCTER LLP  
1900 N. Street, N.W.  
Washington, DC 20036-1612  
(202) 346-4000

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